

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
505 THEODORE LEVIN UNITED STATES COURTHOUSE
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**NOTICE OF AMENDMENT TO LOCAL RULE, PROPOSED NEW LOCAL
RULE AND PROPOSED AMENDMENTS TO LOCAL RULES**

At their regular meeting on June 5, 2017, the Judges of the United States District Court for the Eastern District of Michigan approved amendments to LCrR 17.1, Subpoenas, effective July 1, 2017. Pursuant to Fed. R. Civ. P. 83, the proposed amendments were previously published for comment.

On June 5, 2017, the Court also approved for publication and comment proposed new LR 4.1, Issuance and Service of Process.

On June 5, 2017, the Court approved for publication and comment proposed amendments to the following Local Rules:

- LR 16.5, Case Evaluation
- LCrR 32.1, Guideline Sentencing

Please note that proposed new LR 4.1 and amendments to LCrR 32.1 were previously published for comment and are being republished with substantial revisions based on comments received.

In order to be assured consideration, comments in writing, which may include recommended changes to the proposed new rule and amendments, should be received by the Court not later than August 4, 2017. Comments may be sent to Local_Rules@mied.uscourts.gov or to Local Rules, 505 Theodore Levin United States Courthouse, 231 W. Lafayette Boulevard, Detroit, Michigan 48226.

[Additions are indicated by underline, and deletions by strikethrough.]

LCrR 17.1 ~~Issuance of Subpoenas on Application of Appointed Counsel~~

(a) **Defendant Unable to Pay**

(1) Subpoenas Served Within 100 Miles. For subpoenas to be served within 100 miles from the place of holding court, defense ~~Defense~~ counsel

appointed under the Criminal Justice Act and federal defenders may obtain witness subpoenas from the clerk's office. The clerk must issue those subpoenas signed, sealed, and designated *in forma pauperis*, but otherwise in blank. By completing such a subpoena, defense counsel certifies that in counsel's opinion the witness's presence is necessary to an adequate defense. ~~Witness subpoenas issued under this subrule may not be served more than 100 miles from the place of holding court.~~

(2) Subpoenas Served More Than 100 Miles Away. ~~(b) For subpoenas to be served more than 100 miles from the place of holding court, An application for issuance of a subpoena *in forma pauperis* shall must be made to the Court if the witness will be subpoenaed at a place more than 100 miles from the place of holding court. The application may be made *ex parte*.~~

* * *

~~(c) The United States Marshal is authorized to serve witness subpoenas under pursuant to Fed. R. Crim. P. 17(d).~~

(d) A party seeking a subpoena for books, papers, documents, data, or other objects under Fed. R. Crim. P. 17(c) in advance of trial must seek prior approval from the court. An application for approval may be made *ex parte*. The subpoena must state that the requested items must be returned to the chambers of the assigned judge.

Comment: LCrR 17.1 should be read with Fed. R. Crim. P. 17 (which is substantially similar to Fed R. Civ. P. 45). Paragraph (d) provides guidance for the issuance and return of subpoenas under Fed. R. Crim. P. 17(c). That rule was "not intended to provide a means of discovery for criminal cases," but it was designed "to expedite the trial by providing a time and place before trial for the inspection of subpoenaed materials." *United States v. Nixon*, 418 U.S. 683, 698-99 (1974). To facilitate court supervision of subpoenas directed to third parties, subpoenas issued under that rule must specify that the items sought be returned to the court, and not elsewhere, such as a lawyer's office.

LR 4.1 Issuance and Service of Process

(a) Issuance of process. A party requesting the issuance of any process or who initiates a proceeding in which the issuance of process is required by statute, rule, or order must prepare all required forms. Where necessary, the party must present the process to the Clerk for signature and sealing.

(b) Service of Process. Subject to subsection (c) of this Rule, unless the plaintiff requests otherwise, the Clerk shall arrange for service of the summons and complaint by the United States Marshal for a plaintiff authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916. A request for that assistance is not necessary.

(c) Represented parties. If a plaintiff authorized to proceed in forma pauperis under 28 U.S.C. § 1915, or as a seaman under 28 U.S.C. § 1916, is represented by an attorney, that attorney is deemed specially appointed by the Court and must arrange for service of the summons and complaint.

Comment: This rule implements Federal Rule of Civil Procedure 4(c)(3). When a plaintiff who qualifies for pauper status is represented by an attorney, the attorney must arrange for service of process.

LR 16.5 Case Evaluation

(a) Case Evaluation Under Mich. Ct. R. 2.403. The court may refer a case to case evaluation under Michigan Court Rule 2.403, as amended from time to time, with or without the parties' consent, and applies to civil cases that the court selects for case evaluation, subject to the provisions of this rule. The court may not enforce the sanctions provisions of that rule unless the parties consent to be bound by those provisions before the referral is made, but only if the parties consent to be bound by that rule, including the sanctions provisions. The court may approve other procedures different from those in Mich. Ct. R. 2.403.

* * *

LCrR 32.1 Guideline Sentencing

(a) Not less than 35 days before the sentencing date, the probation officer must disclose the presentence investigation report, excluding the probation officer's recommendation, to the *pro se* defendant or to defense counsel and government counsel. The presentence report is disclosed under 18 U.S.C. § 3552(d):

- (1) when it is physically or electronically delivered, or
- (2) three days after it is mailed.

(b) Within 14 days after disclosure, the *pro se* defendant or counsel for the defendant and counsel for the Government shall communicate to the probation officer and to each other any objections to any material information, sentencing classifications, sentencing guideline ranges, and policy statements which are contained in, or omitted from, the report. Such communication shall be in writing and shall be signed by the defendant or counsel for the defendant or counsel for the Government, or in another manner as the Court directs. Any response to an objection shall be in writing and submitted directly to the probation officer, with copies furnished to all parties.

(i) ~~Nothing within this LCrR requires the disclosure of any portion of the presentence report that is not permitted under Fed. R. Crim. P. 32. The presentence report, any objections thereto, and any correspondence between counsel and a probation officer concerning any such objections shall be maintained in confidence and shall not be disclosed to any person other than the defendant, counsel of record, other persons assisting counsel in the discharge of their professional responsibility representing the client, the probation officer, the Court, and the United States Sentencing Commission without a prior order of the Court authorizing such disclosure.~~

June 16, 2017